

EXHIBIT B

Page 1

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2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481-rdd

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6 In the Matter of:

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8 DPH HOLDINGS CORP., et al.,

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10 Reorganized Debtors.

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14 U.S. Bankruptcy Court

15 300 Quarropas Street

16 White Plains, New York

17

18 December 16, 2010

19 10:45 AM

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22 B E F O R E:

23 HON. ROBERT D. DRAIN

24 U.S. BANKRUPTCY JUDGE

25

1 accrues that it's really for the prior year; a much more, I
2 think, logical assumption. Granted, it is calculated upon, in
3 part, claims that were satisfied during that year, which could
4 include claims of employees that arose pre-petition. But the
5 payment of those claims is not the injury that's the basis for
6 this claim. The basis for this claim is the administrative
7 costs incurred by the bureau for that particular year, which is
8 wholly post-petition.

9 For the same reason, these facts are distinguished
10 from the facts in *In re DeRoche*, 287 F.3d 751 (9th Cir. 2002),
11 as well as *In re Bliemester*, B-L-I-E-M-E-I-S-T-E-R, 251 B.R.
12 383 (Bankr. D. Ariz. 2000) aff'd 296 F.3d 858 (9th Cir. 2002).
13 And I think that's pointed out by the analysis of the Ninth
14 Circuit BAP in *In re Lorber Industries of California*, 373 B.R.
15 663 (9th Cir. BAP 2007), aff'd on other grounds, 564 F.3d 1098
16 (9th Cir. 2009).

17 My focus really needs to be on the injury, in other
18 words, and when that accrued. And here I believe the accrual
19 of the claim -- I guess it's fair to refer to a tax as an
20 injury -- the accrual of the claim or the tax or the injury is,
21 again, the administrative costs incurred by the bureau for the
22 year. So to my mind it's a post-petition claim under these
23 facts and therefore doesn't qualify under 507(a)(8).

24 I think it's also undisputed that all we're talking
25 about here now is future assessments for 2009 forward. Or was

1 2009 actually paid?

2 MR. LYONS: I believe 2008 was paid. 2009 was not
3 paid.

4 THE COURT: So from 2009 forward, the claim should be
5 reduced to reflect that. But it would only be a claim if it
6 were an allowed admin claim and not a pre-petition claim. And
7 the debtors have asserted that it is a -- an untimely admin
8 claim. Whether it was untimely or not has not really been
9 briefed to me, nor has the bureau made any motion for the
10 deemed timely filing of the claim, and all those issues are
11 reserved.

12 MR. BERNARD: Your Honor, the claim as filed is filed
13 as a priority tax claim. Your Honor's ruling today would
14 disallow it as a priority tax claim.

15 THE COURT: Right.

16 MR. BERNARD: Your Honor, we'd request that it be
17 deemed an admin claim.

18 THE COURT: All right, well, I'm not going to rule on
19 that today. I think you're going to have to make a motion on
20 that.

21 MR. BERNARD: Right, but --

22 THE COURT: And you can certainly phrase it in the
23 alternative, but --

24 MR. BERNARD: Yes, Your Honor, but I would object to
25 an order emanating from today that would do more than determine

1 THE COURT: So the claim should be disallowed but
2 without prejudice to any arguments under 9006.

3 MR. BERNARD: Thank you.

4 THE COURT: Okay.

5 MR. LYONS: Thank you, Your Honor.

6 THE COURT: Okay.

7 MR. LYONS: We have one final item on the agenda, and
8 that is the Gregos claim, and I'm going to --

9 THE COURT: Right.

10 MR. LYONS: -- turn the podium over to my colleague
11 Mr. Chiappetta.

12 MR. BERNARD: And, Your Honor, may I be excused?

13 THE COURT: Yes.

14 MR. BERNARD: Thank you.

15 THE COURT: Is -- I don't think -- is anyone here for
16 Mr. Gregos, or on the phone?

17 (No response)

18 THE COURT: No. Okay.

19 MR. CHIAPPETTA: If that's the case, Your Honor -- you
20 know, this is a proof of administrative claim that was, you
21 know, filed on over 528,000 dollars, basically of denial of
22 OPEB that has been terminated.

23 THE COURT: Right.

24 MR. CHIAPPETTA: There were two portions to Mr.
25 Gregos' claim: One requested extended disability benefits, and